

# WISCONSIN LEGISLATIVE COUNCIL STAFF

## ***RULES CLEARINGHOUSE***

**Ronald Sklansky**  
Director  
(608) 266-1946

**Richard Sweet**  
Assistant Director  
(608) 266-2982



**David J. Stute, Director**  
Legislative Council Staff  
(608) 266-1304

One E. Main St., Ste. 401  
P.O. Box 2536  
Madison, WI 53701-2536  
FAX: (608) 266-3830

## **CLEARINGHOUSE RULE 95-130**

### **Comments**

**[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]**

#### **1. Statutory Authority**

Section PSC 170.10 (1) establishes that telecommunications carriers shall be regulated according to, among other provisions of ch. 196, Stats., ss. 196.65 (3) and 196.66, Stats. In addition, the analysis accompanying the rule indicates that one of the statutes interpreted by the rule is s. 196.25, Stats. In light of the notwithstanding clause and the limitation on the regulation of telecommunications carriers under ch. 196 in the first sentence of s. 196.499 (1), Stats., the authority of the commission to establish that a telecommunications carrier shall be regulated according to these provisions is not apparent. The commission should review whether it has the authority to apply these provisions to telecommunications carriers.

#### **2. Form, Style and Placement in Administrative Code**

a. The treatment clause for ch. PSC 170 should be numbered “SECTION 1.” In addition, the phrase “in its entirety” in this treatment clause is redundant and therefore should be deleted.

b. Section PSC 170.01 (2) (intro.) is improperly drafted as introductory material since it does not end in a colon and lead into pars. (a) and (b). [See s. 1.03 (8), Manual.]

c. In s. PSC 170.02, “In this chapter:” should precede “(1).”

d. The definition of “agent” in s. PSC 170.08 (3) should be deleted and instead incorporated into the definition of “agent” in s. PSC 170.02 (1).

e. In ss. PSC 170.03 (3) (c), (d) and (g) and 170.09 (2) (b) and (c), the use of parentheses is not the preferred drafting style. [See s. 1.01 (6), Manual.] It is suggested that the material be worked into the text, placed in a note or deleted.

f. Section PSC 170.06 (1) (f) uses the phrase “currently provided.” This phrase is vague and should be replaced by a phrase such as “provided at the time of the affidavit.” [See s. 1.01 (9) (b), Manual.] Also see s. PSC 170.07 (1) (intro.).

g. The preferred drafting style to express a mandatory duty is to use “shall” as part of the verb. This practice was not followed in a number of instances in the rule. For example, in ss. PSC 170.08 (2) and 170.09 (1) (a) and (4), “will” or “must” were improperly used. [See s. 1.01 (2), Manual.]

h. The last sentence in s. PSC 170.05 (2) (b) states that “This paragraph shall be without force and effect after August 31, 1998.” A preferred drafting style for establishing a delayed termination of the effect of a provision is, for example, “This paragraph does not apply after August 31, 1998.”

i. In s. PSC 170.09 (2) (b), “exchange” should replace “exchange(s).” [See s. 1.01 (6), Manual.] Also see par. (c).

#### **4. Adequacy of References to Related Statutes, Rules and Forms**

a. The analysis accompanying the rule cites ss. 196.219 (4d), 196.65 (3), 196.66, 196.85 and 196.858, Stats., as authorizing rule-making, yet none of these provisions specifically authorize rules. Furthermore, the references to ss. 196.209 and 196.499, Stats., as authorizing rule-making are unduly broad as both of these sections contain considerable other provisions in addition to the authority or duty to adopt rules; specific subsections or paragraphs should be cited.

b. It is suggested that “, as enacted by 1993 Wisconsin Act 496, generally effective September 1, 1994” be deleted from s. PSC 170.01. This information is transitional and should not be included in the text. If it is felt to be necessary, it could be included in a note.

c. In the reference at the end of s. PSC 170.05 (2) (a) 2. c. “a.” should replace “(a)”.

d. In s. PSC 170.09 (1) (b), can s. 985.07 (3), Stats., replace “ch. 985, Stats.”?

#### **5. Clarity, Grammar, Punctuation and Use of Plain Language**

a. The commission should review the following comments relating to the grammar and punctuation in the rule and, as appropriate, amend the rule:

- (1) The last comma in s. PSC 170.03 (1) should be deleted as the clause that follows this comma is not an independent clause.
- (2) An article appears to be missing before “petitioner” or “petitioner’s” in s. PSC 170.03 (3) (b) to (d), (g) and (i) and “Name” in par. (a). An article is missing before “office” in s. PSC 170.06 (1) (c).

(3) In s. PSC 170.09 (2) (d), it appears that “of” should follow “Identification.”

b. The commission should review the following undefined terms to determine whether a definition is necessary to assure consistent application of the rule:

- (1) “Produced” in s. PSC 170.02 (9).
- (2) “Transport facilities” in s. PSC 170.03 (3) (d).
- (3) “Channels” in s. PSC 170.03 (3) (d).
- (4) “Toll-rated” in s. PSC 170.05 (2) (b).

c. The commission should review the following provisions to determine whether they could be drafted in plainer language per s. 1.01 (9), Manual:

- (1) The use of “foregoing” in s. PSC 170.06 (3). Could “information in subs. (1) and (2)” replace “foregoing information”?
- (2) The use of “such” in ss. PSC 170.09 (1) (c) and 170.10 (3).

d. The rule contains a number of provisions that are not clear. The commission should review the entire rule and revise it as necessary to ensure its clarity. Examples of these provisions include the following:

- (1) In s. PSC 170.03 (3) (c) and 170.06 (1) (e), the verb “controlled” is elaborated upon by use of the phrase “by lease or other means.” This elaboration is redundant, as the definition of “control” in s. PSC 170.02 (4) is open-ended and specifically references leasing of plant or equipment.
- (2) The last clause in s. PSC 170.05 (1) (intro.) would be clearer if the phrase “if the commission determines all of the following:” were substituted for the phrase “if the investigation demonstrates all of the following:”.
- (3) Does the commission have a reason for wording ss. PSC 170.03 (3) (e) and 170.06 (1) (h) differently, when they apparently have the same intended effect?
- (4) Does the commission contemplate a telecommunications carrier ever serving only a portion of the state rather than the entire state? If so, the commission may wish to consider revising the newspaper distribution requirement in s. PSC 170.07 (3) (b).
- (5) Are all exchanges in the state served by at least one daily newspaper having general circulation? If not, the commission may wish to consider amending s. PSC 170.09 (1) (b) to address exchanges that are not served by at least one daily newspaper having general circulation.
- (6) The use of “remaining” in s. PSC 170.09 (2) (e) is potentially ambiguous. If “only provider of the service remaining in the exchange” in this paragraph

refers to the telecommunications carrier prior to its seeking to abandon a service in the exchange, then “remaining” is not necessary. Conversely, if the telecommunications carrier is successful in abandoning service in the exchange, it will not remain in the exchange after the abandonment. Can “remaining” be deleted?

- (7) The requirement in s. PSC 170.10 (3) that a telecommunications carrier shall file such additional information as the commission may require is vague. Can the commission be more specific?